

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

V.

ROBERT ARMSTRONG and  
RODOLFO VELAZQUEZ,

## Defendants.

Case No. CR02-5823RJB

## PROCEDURAL ORDER AND ORDER DENYING MOTION FOR ORDER OF TRANSPORT

This matter comes before the court *sua sponte* and on defendant Armstrong's Motion for Order of Transport. The court is familiar with the records and files herein and with the letters addressing procedure from Assistant United States Attorney Helen Brunner dated 4 August 2005, and from Federal Public Defender Tom Hillier dated 1 September 2005.

This case comes before the court for consideration of resentencing pursuant to the remand of the Ninth Circuit Court of Appeals and United States v. Ameline, 409 F.3d 1073 (9<sup>th</sup> Cir. 2005). A clarifying procedural order should now be entered.

In accord with Ameline, each party may file a pleading addressing the sole question of whether the sentence imposed would have been materially different had the district court known that the sentencing guidelines were only advisory. The court is mindful that the burden of proof is on the

1 defendant to prove the positive of the stated proposition, and the court assumes that the burden is by  
2 a preponderance of the evidence. Counsel should be mindful that the question at this point is not  
3 whether the defendant should have received a different sentence. Those questions may be addressed  
4 if a resentencing is ordered.

5 On review of the aforementioned pleadings, the presentence investigations, and transcripts of  
6 the sentencing, (if available), the court will either grant resentencing, deny resentencing, or order oral  
7 argument or an evidentiary hearing, on whether there should be a resentencing.

8 In accord with the previous orders of the court, such pleadings should be filed not later than  
9 23 September 2005. While it remains to be seen whether oral argument will be granted, the time  
10 now scheduled for oral argument, 7 October 2005 at 9:30 a.m., will be reserved for that purpose,  
11 should oral argument be ordered.

12 The threshold question referred to above does not require the defendant's presence at this  
13 time, and defendant Armstrong's Motion for Order of Transport (Dkt. 1015) should be DENIED  
14 without prejudice. The question of the presence of defendants in this district may be raised after the  
15 court's initial ruling as described above.

16 IT IS SO ORDERED.

17 The Clerk of the Court is instructed to send uncertified copies of this Order to all counsel of  
18 record and to any party appearing *pro se* at said party's last known address.

19 DATED this 12<sup>th</sup> day of September, 2005.

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21   
22 Robert J. Bryan  
23 United States District Judge  
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